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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KRISTYNA SOUDERS, individually
and on behalf of all others similarly
situated,
Plaintiff,
vs.
K12 INC.; and DOES 1 through 10,
inclusive,
Defendant.

) Case No.
)
) **CLASS ACTION**
)
) **COMPLAINT FOR VIOLATIONS
OF:**
)
) 1. NEGLIGENT VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]
)
)
) **DEMAND FOR JURY TRIAL**
)
)
)
)

Plaintiff KRISTYNA SOUDERS (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, K12 INC. (“Defendant”), in negligently contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act, *47. U.S.C. § 227 et seq.* (“TCPA”), thereby causing Plaintiff to incur unwanted and unnecessary charges and invading Plaintiff’s privacy.

JURISDICTION & VENUE

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a Delaware company. Plaintiff also seeks \$500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Central District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does business within the State of California and Plaintiff resides within the County of Los Angeles.

PARTIES

4. Plaintiff, KRISTYNA SOUDERS (“Plaintiff”), is a natural person residing in Palmdale, California and is a “person” as defined by *47 U.S.C. § 153 (39)*.

5. Defendant, K12 INC. (“Defendant”), is a for-profit online education company, and is a “person” as defined by *47 U.S.C. § 153 (39)*.

6. The above named Defendant, and its subsidiaries and agents, are

1 collectively referred to as “Defendants.” The true names and capacities of the
2 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
3 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
4 names. Each of the Defendants designated herein as a DOE is legally responsible
5 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
6 Complaint to reflect the true names and capacities of the DOE Defendants when
7 such identities become known.

8 7. Plaintiff is informed and believes that at all relevant times, each and
9 every Defendant was acting as an agent and/or employee of each of the other
10 Defendants and was acting within the course and scope of said agency and/or
11 employment with the full knowledge and consent of each of the other Defendants.
12 Plaintiff is informed and believes that each of the acts and/or omissions complained
13 of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

15 8. Beginning in or around February of 2018, Defendant contacted
16 Plaintiff on Plaintiff’s cellular telephone numbers ending in -4086 in an attempt to
17 solicit Plaintiff to purchase Defendants’ services.

18 9. Defendants contacted or attempted to contact Plaintiff from telephone
19 numbers belonging to Defendants, including without limitation (916) 403-9685.

20 10. Defendants used an “automatic telephone dialing system” as defined
21 by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to solicit its services.

22 11. Furthermore, at one or more instance during these calls, Defendant
23 utilized an “artificial or prerecorded voice” as prohibited by 47 U.S.C. §
24 227(b)(1)(A).

25 12. Defendant’s calls constituted calls that were not for emergency
26 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

27 13. Defendant’s calls were placed to telephone number assigned to a
28 cellular telephone service for which Plaintiff incurs a charge for incoming calls

pursuant to 47 U.S.C. § 227(b)(1).

14. Plaintiff is not a customer of Defendant's services and has never provided any personal information, including her telephone number, to Defendant for any purpose whatsoever.

15. During all relevant times, Defendant did not possess Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on its cellular telephones pursuant to *47 U.S.C. § 227(b)(1)(A)*.

16. Defendant placed multiple calls soliciting its business to Plaintiff on its cellular telephones beginning in or around February of 2018.

17. Such calls constitute solicitation calls pursuant to 47 C.F.R. § 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

18. Plaintiff received numerous solicitation calls from Defendant within a 12-month period.

19. Upon information and belief, and based on Plaintiff's experiences of being called by Defendant, and at all relevant times, Defendant failed to establish and implement reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under 47 U.S.C. § 227(c)(5).

CLASS ALLEGATIONS

20. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the proposed class (hereafter “The Class”). The Class is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such

1 person had not previously consented to receiving such
2 calls within the four years prior to the filing of this
3 Complaint

4 21. Plaintiff represents, and is a member of, The Class, consisting of all
5 persons within the United States who received any solicitation telephone calls from
6 Defendant to said person's cellular telephone made through the use of any
7 automatic telephone dialing system or an artificial or prerecorded voice and such
8 person had not previously not provided their cellular telephone number to
9 Defendant within the four years prior to the filing of this Complaint.

10 22. Defendant, their employees and agents are excluded from The Class.
11 Plaintiff does not know the number of members in The Class, but believes the Class
12 members number in the thousands, if not more. Thus, this matter should be
13 certified as a Class Action to assist in the expeditious litigation of the matter.

14 23. The Class is so numerous that the individual joinder of all of its
15 members is impractical. While the exact number and identities of The Class
16 members are unknown to Plaintiff at this time and can only be ascertained through
17 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
18 The Class includes thousands of members. Plaintiff alleges that The Class
19 members may be ascertained by the records maintained by Defendant.

20 24. Plaintiff and members of The Class were harmed by the acts of
21 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
22 and Class members via their cellular telephones thereby causing Plaintiff and Class
23 members to incur certain charges or reduced telephone time for which Plaintiff and
24 Class members had previously paid by having to retrieve or administer messages
25 left by Defendant during those illegal calls, and invading the privacy of said
26 Plaintiff and Class members.

27 25. Common questions of fact and law exist as to all members of The
28 Class which predominate over any questions affecting only individual members of

1 The Class. These common legal and factual questions, which do not vary between
2 Class members, and which may be determined without reference to the individual
3 circumstances of any Class members, include, but are not limited to, the following:

- 4 a. Whether, within the four years prior to the filing of this
5 Complaint, Defendant made any telemarketing/solicitation call
6 (other than a call made for emergency purposes or made with
7 the prior express consent of the called party) to a Class member
8 using any automatic telephone dialing system or any artificial
9 or prerecorded voice to any telephone number assigned to a
10 cellular telephone service;
- 11 b. Whether Plaintiff and The Class members were damaged
12 thereby, and the extent of damages for such violation; and
- 13 c. Whether Defendant and their agents should be enjoined from
14 engaging in such conduct in the future.

15 26. As a person that received numerous telemarketing/solicitation calls
16 from Defendant using an automatic telephone dialing system or an artificial or
17 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
18 claims that are typical of The Class.

19 27. Plaintiff will fairly and adequately protect the interests of the members
20 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
21 class actions.

22 28. A class action is superior to other available methods of fair and
23 efficient adjudication of this controversy, since individual litigation of the claims
24 of all Class members is impracticable. Even if every Class member could afford
25 individual litigation, the court system could not. It would be unduly burdensome
26 to the courts in which individual litigation of numerous issues would proceed.
27 Individualized litigation would also present the potential for varying, inconsistent,
28 or contradictory judgments and would magnify the delay and expense to all parties

1 and to the court system resulting from multiple trials of the same complex factual
2 issues. By contrast, the conduct of this action as a class action presents fewer
3 management difficulties, conserves the resources of the parties and of the court
4 system, and protects the rights of each Class member.

5 29. The prosecution of separate actions by individual Class members
6 would create a risk of adjudications with respect to them that would, as a practical
7 matter, be dispositive of the interests of the other Class members not parties to such
8 adjudications or that would substantially impair or impede the ability of such non-
9 party Class members to protect their interests.

10 30. Defendant have acted or refused to act in respects generally applicable
11 to The Class, thereby making appropriate final and injunctive relief with regard to
12 the members of the Class as a whole.

13 **FIRST CAUSE OF ACTION**

14 **Negligent Violations of the Telephone Consumer Protection Act**

15 **47 U.S.C. §227(b).**

16 **On Behalf of The Class**

17 31. Plaintiff repeats and incorporates by reference into this cause of action
18 the allegations set forth above at Paragraphs 1-30.

19 32. The foregoing acts and omissions of Defendant constitute numerous
20 and multiple negligent violations of the TCPA, including but not limited to each
21 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
22 *47 U.S.C. § 227 (b)(1)(A)*.

23 33. As a result of Defendant' negligent violations of *47 U.S.C. § 227(b)*,
24 Plaintiff and The Class Members are entitled an award of \$500.00 in statutory
25 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

26 34. Plaintiff and The Class members are also entitled to and seek
27 injunctive relief prohibiting such conduct in the future.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- An order for injunctive relief prohibiting such conduct by Defendants in the future.
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

35. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 23rd Day of October, 2018.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman

Todd M. Friedman

Law Offices of Todd M. Friedman

Attorney for Plaintiff